

IN THE CIRCUIT COURT OF STONE COUNTY, MISSOURI  
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.	)	
JEREMIAH W. (JAY) NIXON,	)	
Attorney General of Missouri,	)	
THE CLEAN WATER COMMISSION,	)	
and THE MISSOURI DEPARTMENT OF	)	
NATURAL RESOURCES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
FRONTIER TOWN-MISSOURI, INC.	)	
and KENNETH DELA FRANGE, SR.	)	
in his individual capacity,	)	
	)	
SERVE: Craig F. Lowther	)	
Lowther, Johnson, Joyner,	)	
Lowther, Cully & Housley, L.L.C.	)	
901 St. Louis St., 20 <sup>th</sup> Fl.	)	
Springfield, MO 65806	)	
Registered Agent for Frontier	)	
Town-Missouri, Inc.	)	
	)	
and	)	
	)	
Kenneth Dela Frange, Sr.	)	
109 Cascade Road	)	
Amenia, NY 12501	)	

**PETITION FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

COMES NOW Plaintiff, State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, Attorney General of Missouri, the Missouri Clean Water Commission and the Missouri Department of Natural Resources, by and through Harry D. Bozoian, Assistant Attorney General, and files this Petition for Injunctive Relief and Civil Penalties pursuant to the

Missouri Clean Water Law, Chapter 644, RSMo and the rules and regulations duly promulgated pursuant thereto, as follows:

**THE PARTIES**

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

2. The Missouri Clean Water Commission is a Commission created by § 644.021, RSMo, and is authorized to administer and enforce the Missouri Clean Water Law and the rules and regulations duly promulgated thereunder.

3. The Missouri Department of Natural Resources (“the Department”) is a duly authorized state agency created under Section X of the Omnibus State Reorganization Act of 1974 (formerly Appendix B, now Chapter 640), and is authorized to administer the provisions of the Missouri Clean Water Law, Chapter 644, RSMo, and the rules and regulations duly promulgated thereunder.

4. Defendant Frontier Town-Missouri, Inc. was at all times relevant to this Petition, a registered Corporation in the State of Missouri. Currently, Frontier Town-Missouri, Inc. is an administratively dissolved corporation in the State of Missouri.

5. Defendant Kenneth Dela Frange, Sr. was and is at all times relevant to this Petition, the president and director of Frontier Town-Missouri, Inc. and was and is authorized to act on behalf of Frontier Town-Missouri, Inc.

6. Defendant Kenneth Dela Frange, Sr., at all times relevant to this petition, participated in, controlled and directed the day-to-day activities of the corporation and conducted business on behalf of Frontier Town-Missouri, Inc. with respect to certain real property located at the intersection of Highway 160 and Highway 248 in Reeds Spring, Missouri and generally located in the Northwest Quarter, Southeast Quarter, Section 19, Township 24 North, Range 22 West, Stone County, Missouri (“the site”).

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**FACTUAL HISTORY**

7. On or about August 26, 1998, and October 2, 1998, defendant Frontier Town-Missouri, Inc. purchased the site as reflected in the deeds marked as Exhibit A, copies of which are attached hereto, and incorporated herein by reference.

8. The site consists of an approximately 249 acres that slopes steeply toward an unnamed tributary of Railey Creek, waters of the State of Missouri pursuant to § 644.016(25), RSMo. Railey Creek flows in a westerly direction and is a tributary to the James River.

9. On or about June 19, 1998, the Department issued Missouri State Operating Permit (“MSOP”) No. MO-R103083, a copy of which is attached hereto, incorporated herein and marked Exhibit B, to Frontier Town-Missouri, Inc. MSOP Permit No. MO-R103083 authorized construction or land disturbance activity at the site with specific restrictions, such as, among other things, maintaining sufficient erosion controls, maintaining sufficient vegetation, and preventing erosion ditches from developing on the site. Such restrictions are

required under MSOP Permit No. MO-R103083 to prevent sediment and other pollutants from entering into waters of the State of Missouri.

10. Beginning in 1999, the site was cleared of vegetation and shallow soils at the direction of defendant Frontier Town-Missouri, Inc. and defendant Kenneth Dela Frange, Sr.

11. Since that time, insufficient erosion controls have been implemented on the site which resulted in deep erosion ditches forming on the site. Said erosion ditches discharge directly into the unnamed tributary of Railey Creek.

### **VIOLATIONS OF LAW**

12. On or about October 14, 1999, a Department investigation of the site revealed that existing soil control measures and the stormwater velocity reduction techniques upgradient of the soil control measures were inadequate and in disrepair. Furthermore, adequate vegetation had not been established in the solids control measure area or the stormwater velocity reduction area. As such, soil and sediment from the site had entered into a tributary of Railey Creek in violation of §§ 644.051.1 and 644.076.1, RSMo.

13. On or about April 25, 2000, another Department investigation revealed that defendants had failed to maintain erosion control measures on the site, resulting in a release of large amounts of gravel and silt into a tributary of Railey Creek. As a result thereof, on May 15, 2000, the Department issued to defendant Frontier Town-Missouri, Inc. Notice of Violation (“NOV”) No. 4459, a copy of which is attached hereto, incorporated herein and marked as Exhibit C.

14. To date, defendants have failed to take corrective action to address the deficiencies and violations of the Missouri Clean Water Law as stated in Exhibit C.

15. On or about May 25, 2000, and July 21, 2000, the Department conducted further inspections of the site. These inspections revealed that several locations on the southern boundary of the site allowed large quantities of sediment and gravel to be deposited into a tributary of Railey Creek. Said discharges to waters of the State of Missouri were due to defendants' failure to maintain erosion control measures along the southern boundary of their site. As a result of these inspections, the Department issued defendant, Frontier Town-Missouri, Inc., NOV No. 4636, a copy of which is attached hereto, incorporated herein and marked as Exhibit D.

16. To date, defendants have failed to take corrective action to address the deficiencies and violations of the Missouri Clean Water Law as stated in Exhibit D.

17. The violations cited in Exhibits C and D violate the erosion control requirements of defendant Frontier Town-Missouri, Inc.'s MSOP Permit No. MO-R103083.

18. Defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr., at his direction, violated and continue to violate MSOP Permit No. MO-R103083 by failing to maintain adequate erosion control structures at the site. As a result thereof, large amounts of gravel and silt discharged into and continue to discharge into a tributary of Railey Creek.

19. Defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr., at his direction, discharged and continue to discharge water contaminants into waters of the state

as referenced in Exhibits C and D, which reduced and continue to reduce the quality of waters of the state below the water quality standards established by the Commission in violation of § 644.051(2) and 10 CSR 20-7.031.

20. Defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr., at his direction, caused and continue to cause pollution to a tributary of Railey Creek, waters of the state, by allowing large amounts of gravel and silt to enter into a tributary of Railey Creek, in violation of §§ 644.051.1(1) and 644.076.1, RSMo.

21. Section 644.076.1, RSMo, authorizes a civil action for injunctive relief to prevent any such violation or further violation or for the assessment of a penalty not to exceed Ten Thousand Dollars (\$10,000.00) per day for each day or part thereof the violation occurred or continues to occur, or both, as the Court deems proper.

22. Venue in this action is proper under § 644.076.1, RSMo.

23. Plaintiff does not have an adequate remedy at law.

24. That unless enjoined, defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr. will continue to allow sediment, gravel and silt to enter into a tributary of Railey Creek in violation of §§ 644.051.1 and 644.076.1, RSMo.

WHEREFORE, plaintiff prays for judgment against defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr. as follows:

A. Issue a preliminary and permanent injunction against defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr. to cease discharging sediment, silt and gravel into a tributary of Railey Creek.

B. Issue a preliminary and permanent injunction enjoining defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr. to comply with MSOP MO-R1-03083.

C. Issue a preliminary and permanent injunction enjoining defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr. to remediate the site to its original and natural condition.

D. Issue a preliminary and permanent injunction enjoining defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr. to remediate the tributary of Railey Creek to its original and natural condition by removing all sediment, silt and gravel contained therein that was unlawfully discharged from their site.

E. Assess a civil penalty against defendants Frontier Town-Missouri, Inc. and Kenneth Dela Frange, Sr. not to exceed Ten Thousand Dollars (\$10,000.00) per day for each violation of the Missouri Clean Water Law and regulations promulgated thereunder, and order defendants to pay said sum to the Stone County Treasurer as Trustee for the Stone County School Fund.

F. Order plaintiff its costs and reasonable attorney's fees expended herein as allowed by § 644.096 and for such other relief the Court deems just and proper under the circumstances.

Respectfully submitted,

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